IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.125 OF 2003

Bhanumati S. Gandhi & Anr. ...Appellants
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

ALONGWITH
APPEAL FROM ORDER NO.126 OF 2003

Mrs Padmini M. Balsara & Anr. ..Appellants
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

ALONGWITH
APPEAL FROM ORDER NO.127 OF 2003

Shri Hemendra V. Doshi ...Appellant
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

ALONGWITH
APPEAL FROM ORDER NO.128 OF 2003

Smt Rupa Tushar Gandhi ...Appellant
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

ALONGWITH
APPEAL FROM ORDER NO.129 OF 2003

Bhanumati S. Gandhi & Anr. ...Appellants
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

AND
APPEAL FROM ORDER NO.130 OF 2003

Shri Tushar Shantilal Gandhi ...Appellant
Vs.
M/s.Kaushik Builders Pvt Ltd
& Ors. ...Respondents

Shri Anil C.Singh i/by Shri Dhanesh R. Shah for the Appellants in all Appeals.

Shri S.R.Mishra for the Respondent No.4 in all Appeals.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 15, 2007.

P.C.:

1. Heard learned counsel appearing for the Appellants and the learned counsel appearing for the fourth Respondent. According to the case of the Appellants, an agreement has been executed in their favour by the first to third Respondents for sale of certain flats in a building which was being constructed by the said Respondents. The fourth Respondent is a developer who is claiming on the basis of transfer of development rights by the first Respondent. Notices of Motion were taken out by the Appellants for injunction, appointment of receiver etc. Notices of Motion have been dismissed by a common order. On 03rd March, 2004, this Court granted interim relief in terms of prayer clause (c) of the Civil Applications in favour of the Appellants. By the said interim order the Respondents were restrained from creating any third party interests in respect of the suit flats and from parting with possession of the suit flats in favour of third parties.

2. As of today it is an admitted position that the construction of the building is incomplete as a result of the various disputes inter se between the Respondents. It is an admitted position that flats which are subject matter of the suit filed by the Appellants are not yet ready.

3. There are various issues raised in these Appeals

by the Appellant and the fourth Respondent. Some of the issues are legal issues regarding the nature of the suit agreements, maintainability of the suit etc. As of today, there is no question of any one selling or parting with possession of the suit flats as the same are not yet ready. Considering this factual situation, if all the issues which arise for consideration in these Appeals are decided, it will cause prejudice to the parties in the pending suit.

4. I am inclined to continue interim relief granted by this Court till further orders only on the ground that as of today the flats in dispute are not ready. In the event construction activities are recommenced by any one of the Respondents or any one claiming on their behalf, an Application can be always made to the trial Court for modification of the interim relief which is hereby granted and which is continued till the disposal of the suit. If Application for modification is made before the trial Court, all the questions which arise in these Appeals can be considered afresh and appropriate order can be passed by the trial Court considering the equities.

5. Hence, I pass the following order:

(i) Subject to what is observed above, interim

relief granted by this Court on 03rd March, 2004 will continue to operate till the final disposal of the pending suits with liberty to the Respondents to apply for variation/modification or vacation of the said interim order in the event construction of the building is recommenced.

(ii) All contentions of the parties on merits of the suit are expressly kept open and the suit will be decided by the trial Court uninfluenced by the orders impugned as well as the continuation of the interim order by this Court.

(iii) There will be no orders as to costs.

JUDGE